

**REMARKS**

The Office Action dated June 20, 2005 contained a final rejection of claims 1-48. The Applicant has amended claims 1, 6, 13, 15, 23, 28, 36, 40 and 46. Claims 1-48 are in the case. Please consider the present amendment with the attached Request for Continued Examination (RCE) under 37 C.F.R. § 1.114. This amendment is in accordance with 37 C.F.R. § 1.114. Reexamination and reconsideration of the application, as amended, are requested.

The Office Action rejected claims 1-8, 10-20, 23-34, 36-42, and 44-48 under 35 U.S.C. 103(a) as allegedly being unpatentable over Stumm (U.S. Patent No. 5,768,528) in view of Peterson et al. (U.S. Patent No. 6,594,682). Also, the Office Action rejected claims 9, 21-22, 35, and 43 under 35 U.S.C. 103(a) as allegedly being unpatentable over Stumm in view of Peterson et al. and further in view of Milovanovic et al. (U.S. Patent No. 6,484,198).

The Applicants traverse these rejections because the combined cited references are missing elements of the amended claimed invention. Namely, claims 1, 6, and 40 of the Applicants' invention now include the "...delivery schedule to be approved by a publisher for preserving temporal dimensions of a work of authorship". Claims 13, 15, 23, 28, 36, and 46 now include wherein the delivery schedule is configured to preserve temporal dimensions of a work of authorship of the publisher. Clearly, these elements are not disclosed, taught, or suggested by the combined references.

These elements have advantages not appreciated by the combined cited references. For instance, as discussed on page 3, lines 14-26, of the Applicants' specification, "[B]y allowing a consumer to subscribe to a multi-issue publication and set their own schedule for distribution, a service enables the consumer to read the publication at their leisure and allows the electronic publisher to not be required to monitor the content for time sensitive material. Moreover, the publisher often wishes to maintain control over certain parameters of the publication for artistic, economic, timing, and other reasons. The publisher can require that the sequential information (content) be delivered only in ascending sequential order, for example. Or, the sequential information can only be delivered as a portion, a single issue, in the sequence and only be delivered in a particular time frame. For artistic reasons, an author may require that

one chapter of a novel must be followed by a period of time during which the next chapter will not be allowed to be delivered. The present invention offers a new physical and temporal dimension to works of authorship while still enabling a consumer to receive the content in portions on a convenient schedule.”  
[emphasis added].

In addition, even though the combined references do not disclose, teach, or suggest the Applicants' claimed invention, the references should not be considered together because Stumm et al. teach away from the Applicants' invention. For example, Stumm et al. disclose that “...each publisher is allowed to control the times which a subscriber is scheduled to access server system 20.” This is the opposite of the Applicants' claimed invention, which allows the subscriber, and not the publisher, to control delivery times and schedules. Instead, Stumm et al. explicitly state that “[T]hus, each publisher is allowed to control the times which a subscriber is scheduled to access server system 20.” (see col. 9, lines 20-27 and lines 45-51), which is a teaching away from the Applicants' claimed invention.

As such, allowing a subscriber to create and control custom delivery schedules would contradict the statement made in col. 9, lines 20-27 and lines 45-51 of Stumm et al. Hence, this element of the Applicants' claimed invention would destroy the main function, purpose and spirit of Stumm et al. As such, this “teaching away” prevents this reference from being used by the Examiner. ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). Therefore, since the claimed elements of a delivery rule received from the user or subscriber for the content and enabling the subscriber to create and control a custom issue delivery schedule are not disclosed by Stumm et al. and because Stumm et al., teaches away from the Applicants' invention, Stumm et al. cannot render the claims obvious, and hence, the Applicants submit that the rejection should be withdrawn. *MPEP 2143*.

With regard to the rejection of the dependent claims, because they depend from the above-argued respective independent claims, and they contain additional limitations that are patentably distinguishable over the cited references, these claims are also considered to be patentable (*MPEP* § 2143.03).


Thus, it is respectfully requested that all of the claims be allowed based on the amendments and arguments. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. Additionally, in an effort to further the prosecution of the subject application, the

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Applicants kindly invite the Examiner to telephone the Applicants' attorney at (818) 885-1575 if the Examiner has any questions or concerns. Please note that all correspondence should continue to be directed to:

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Respectfully submitted,  
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